

APPENDIX 2

SCHEDULE 12.3

SUPPORT SERVICES FOR RESALE

1. **BA OSS SERVICES**

1.1 **Definitions**

As used in the Schedule 12.3, the following terms shall have the meanings stated below:

1.1.1 "BA Operations Support Systems" means BA systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing.

1.1.2 "BA OSS Services" means access to BA Operations Support Systems functions. The term "BA OSS Services" includes, but is not limited to: (a) BA's provision of Cavalier Usage Information to Cavalier pursuant to Section 1.3 below; and, (b) "BA OSS Information", as defined in Section 1.1.4 below.

1.1.3 "BA OSS Facilities" means any gateways, interfaces, databases, facilities, equipment, software, or systems, used by BA to provide BA OSS Services to Cavalier.

1.1.4 "BA OSS Information" means any information accessed by, or disclosed or provided to, Cavalier through or as a part of BA OSS Services. The term "BA OSS Information" includes, but is not limited to: (a) any Customer Information related to a BA Customer or a Cavalier Customer accessed by, or disclosed or provided to, Cavalier through or as a part of BA OSS Services; and, (b) any Cavalier Usage Information (as defined in Section 1.1.6 below) accessed by, or disclosed or provided to, Cavalier.

1.1.5 "BA Retail Telecommunications Service" means any Telecommunications Service that Bell Atlantic provides at retail to subscribers that are not Telecommunications Carriers. The term "BA Retail Telecommunications Service" does not include any exchange access service (as defined in Section 3(16) of the Act, 47 U.S.C. § 153(16)) provided by BA.

1.1.6 "Cavalier Usage Information" means the usage information for a BA Retail Telecommunications Service purchased by Cavalier under this Agreement that BA would record if BA was furnishing such BA Retail Telecommunications Service to a BA end-user retail Customer.

1.1.7 "Customer Information" means CPNI of a Customer and any other non-public, individually identifiable information about a Customer or the purchase by a Customer of the services or products of a Party.

1.2 BA OSS Services

1.2.1 Upon request by Cavalier, BA shall provide to Cavalier, pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3), BA OSS Services.

1.2.2 Subject to the requirements of Applicable Law, BA Operations Support Systems, BA Operations Support Systems functions, BA OSS Facilities, BA OSS Information, and the BA OSS Services that will be offered by BA, shall be as determined by BA. Subject to the requirements of Applicable Law, BA shall have the right to change BA Operations Support Systems, BA Operations Support Systems functions, BA OSS Facilities, BA OSS Information, and the BA OSS Services, from time-to-time, without the consent of Cavalier.

1.3 Cavalier Usage Information

1.3.1 Upon request by Cavalier, BA shall provide to Cavalier, pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3), Cavalier Usage Information.

1.3.2 Cavalier Usage Information will be available to Cavalier through the following:

(a) Daily Usage File on Data Tape.

(b) Daily Usage File through Network Data Mover ("NDM").

(c) Daily Usage File through Centralized Message Distribution System ("CMDS").

1.3.3.1 Cavalier Usage Information will be provided in a Bellcore Exchange Message Records ("EMR") format.

1.3.3.2 Daily Usage File Data Tapes provided pursuant to Section 1.3.2(a) above will be issued each day, Monday through Friday, except holidays observed by BA.

1.3.4 Except as stated in this Section 1.3, subject to the requirements of Applicable Law, the manner in which, and the frequency with which, Cavalier Usage Information will be provided to Cavalier shall be determined by BA.

1.5 Access to and Use of BA OSS Facilities

1.5.1 BA OSS Facilities may be accessed and used by Cavalier only to the extent necessary for Cavalier's access to and use of BA OSS Services pursuant to the Agreement.

1.5.2 BA OSS Facilities may be accessed and used by Cavalier only to provide Telecommunications Services to Cavalier Customers.

1.5.3 Cavalier shall restrict access to and use of BA OSS Facilities to Cavalier. This Schedule 12.3 does not grant to Cavalier any right or license to grant sublicenses to other persons, or permission to other persons (except Cavalier's employees, agents and contractors, in accordance with Section 1.5.7 below), to access or use BA OSS Facilities.

1.5.4 Cavalier shall not (a) alter, modify or damage the BA OSS Facilities (including, but not limited to, BA software), (b) copy, remove, derive, reverse engineer, or decompile, software from the BA OSS Facilities, or (c) obtain access through BA OSS Facilities to BA databases, facilities, equipment, software, or systems, which are not offered for Cavalier's use under this Schedule 12.3.

1.5.5 Cavalier shall comply with all practices and procedures established by BA for access to and use of BA OSS Facilities (including, but not limited to, BA practices and procedures with regard to security and use of access and user identification codes).

1.5.6 All practices and procedures for access to and use of BA OSS Facilities, and all access and user identification codes for BA OSS Facilities: (a) shall remain the property of BA; (b) shall be used by Cavalier only in connection with Cavalier's use of BA OSS Facilities permitted by this Schedule 12.3; (c) shall be treated by Cavalier as Confidential Information of BA pursuant to subsection 29.4 of the Agreement; and, (d) shall be destroyed or returned by Cavalier to BA upon the earlier of request by BA or the expiration or termination of the Agreement.

1.5.7 Cavalier's employees, agents and contractors may access and use BA OSS Facilities only to the extent necessary for Cavalier's access to and use of the BA OSS Facilities permitted by this Agreement. Any access to or use of BA OSS Facilities by Cavalier's employees, agents, or contractors, shall be subject to the provisions of the Agreement, including, but not limited to, subsection 29.4 thereof and Sections 1.5.6 and 1.6.3.3 of this Schedule 12.3.

1.6 BA OSS Information

1.6.1 Subject to the provisions of this Schedule 12.3 and Applicable Law, BA grants to Cavalier a non-exclusive license to use BA OSS Information.

1.6.2 All BA OSS Information shall at all times remain the property of BA. Except as expressly stated in this Schedule 12.3, Cavalier shall acquire no rights in or to any BA OSS Information.

1.6.3.1 The provisions of this Section 1.6.3 shall apply to all BA OSS Information, except (a) Cavalier Usage Information, (b) CPNI of Cavalier, and (c) CPNI of a BA Customer or a Cavalier Customer, to the extent the Customer has authorized Cavalier to use the Customer Information.

1.6.3.2 BA OSS Information may be accessed and used by Cavalier only to provide Telecommunications Services to Cavalier Customers.

1.6.3.3 Cavalier shall treat BA OSS Information that is designated by BA, through written or electronic notice (including, but not limited to, through the BA OSS Services), as "Confidential" or "Proprietary" as Confidential Information of BA pursuant to subsection 29.4 of the Agreement.

1.6.3.4 Except as expressly stated in this Schedule 12.3, this Agreement does not grant to Cavalier any right or license to grant sublicenses to other persons, or permission to other persons (except Cavalier's employees, agents or contractors, in accordance with Section 1.6.3.5 below, to access, use or disclose BA OSS Information.

1.6.3.5 Cavalier's employees, agents and contractors may access, use and disclose BA OSS Information only to the extent necessary for Cavalier's access to, and use and disclosure of, BA OSS Information permitted by this Schedule 12.3. Any access to, or use or disclosure of, BA OSS Information by Cavalier's employees, agents or contractors, shall be subject to the provisions of this Agreement, including, but not limited to, subsection 29.4 of the Agreement and Section 1.6.3.3 above.

1.6.3.6 Cavalier's license to use BA OSS Information shall expire upon the earliest of: (a) the time when the BA OSS Information is no longer needed by Cavalier to provide Telecommunications Services to Cavalier Customers; (b) termination of the license in accordance with this Schedule 12.3; or (c) expiration or termination of the Agreement.

1.6.3.7 All BA OSS Information received by Cavalier shall be destroyed or returned by Cavalier to BA, upon expiration, suspension or termination of the license to use such BA OSS Information.

1.6.4 Unless sooner terminated or suspended in accordance with the Agreement or this Schedule 12.3 (including, but not limited to, subsection 22.3 of the Agreement and Section 1.7.1 above), Cavalier's access to BA OSS Information through BA OSS Services shall terminate upon the expiration or termination of the Agreement.

1.6.5.1 Without in any way limiting subsection 18.3 of the Agreement, BA shall have the right (but not the obligation) to audit Cavalier to ascertain whether Cavalier is complying with the requirements of Applicable Law and this Agreement with regard to Cavalier's access to, and use and disclosure of, BA OSS Information.

1.6.5.2 Without in any way limiting any other rights BA may have under the Agreement or Applicable Law, BA shall have the right (but not the obligation) to monitor Cavalier's access to and use of BA OSS Information which is made available by BA to Cavalier pursuant to this Agreement, to ascertain whether Cavalier is complying with the requirements of Applicable Law and this Agreement, with regard to Cavalier's access to, and use and disclosure of, such BA OSS Information. The foregoing right shall include,

but not be limited to, the right (but not the obligation) to electronically monitor Cavalier's access to and use of BA OSS Information which is made available by BA to Cavalier through BA OSS Facilities.

1.6.5.3 Information obtained by BA pursuant to this Section 1.6.5 shall be treated by BA as Confidential Information of Cavalier pursuant to subsection 29.4 of the Agreement; provided that, BA shall have the right (but not the obligation) to use and disclose information obtained by BA pursuant to this Section 1.6.5 to enforce BA's rights under the Agreement or Applicable Law.

1.6.6 Cavalier acknowledges that the BA OSS Information, by its nature, is updated and corrected on a continuous basis by BA, and therefore that BA OSS Information is subject to change from time to time.

1.7 Liabilities and Remedies

1.7.1 Any breach by Cavalier, or Cavalier's employees, agents or contractors, of the provisions of Sections 1.5 or 1.6 above shall be deemed a material breach of the Agreement. In addition, if Cavalier or an employee, agent or contractor of Cavalier at any time breaches a provision of Sections 1.5 or 1.6 above and such breach continues for more than ten (10) days after written notice thereof from BA, then, except as otherwise required by Applicable Law, BA shall have the right, upon notice to Cavalier, to suspend the license to use BA OSS Information granted by Section 1.6.1 above and/or the provision of BA OSS Services, in whole or in part.

1.7.2 Cavalier agrees that BA would be irreparably injured by a breach of Sections 1.5 or 1.6 above by Cavalier or the employees, agents or contractors of Cavalier, and that BA shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any such breach. Such remedies shall not be deemed to be the exclusive remedies for any such breach, but shall be in addition to any other remedies available under this Agreement or at law or in equity.

1.8 Relation to Applicable Law

The provisions of Sections 1.5, 1.6 and 1.7 above shall be in addition to and not in derogation of any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by BA of any right with regard to protection of the confidentiality of the information of BA or BA Customers provided by Applicable Law.

1.9 Cooperation

Cavalier, at Cavalier's expense, shall reasonably cooperate with BA in using BA OSS Services. Such cooperation shall include, but not be limited to, the following:

1.9.1 Upon request by BA, Cavalier shall by no later than the fifteenth (15th) day of each calendar month submit to BA reasonable, good faith estimates (by central office or other BA office or geographic area designated by BA) of the volume of each BA Retail Telecommunications Service for which Cavalier anticipates submitting orders in each week of the next calendar month.

1.9.2 Upon request by BA, Cavalier shall submit to BA reasonable, good faith estimates of other types of transactions or use of BA OSS Services that Cavalier anticipates.

1.9.3 Cavalier shall reasonably cooperate with BA in submitting orders for BA Retail Telecommunications Services and otherwise using the BA OSS Services, in order to avoid exceeding the capacity or capabilities of such BA OSS Services.

1.9.4 Cavalier shall participate in cooperative testing of BA OSS Services and shall provide assistance to BA in identifying and correcting mistakes, omissions, interruptions, delays, errors, defects, faults, failures, or other deficiencies, in BA OSS Services.

1.10 BA Access to Information Related to Cavalier Customers

1.10.1 BA shall have the right to access, use and disclose information related to Cavalier Customers that is in BA's possession (including, but not limited to, in BA OSS Facilities) to the extent such access, use and/or disclosure has been authorized by the Cavalier Customer in the manner required by Applicable Law.

1.10.2 Upon request by BA, Cavalier shall negotiate in good faith and enter into a contract with BA, pursuant to which BA may obtain access to Cavalier's operations support systems (including, systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing) and information contained in such systems, to permit BA to obtain information related to Cavalier Customers (as authorized by the applicable Cavalier Customer), to permit Customers to transfer service from one Telecommunications Carrier to another, and for such other purposes as may be permitted by Applicable Law.

2. BELL ATLANTIC PRE-OSS SERVICES

2.1 As used in this Schedule 12.3, "BA Pre-OSS Service" means a service which allows the performance of an activity which is comparable to an activity to be performed through a BA OSS Service and which BA offers to provide to Cavalier prior to, or in lieu of, BA's provision of the BA OSS Service to Cavalier. The term "BA Pre-OSS Service" includes, but is not limited to, the activity of placing orders for BA Retail Telecommunications Services through a telephone facsimile communication.

2.2 Subject to the requirements of Applicable Law, the BA Pre-OSS Services that will be offered by BA shall be as determined by BA and BA shall have the right to change BA Pre-OSS Services, from time-to-time, without the consent of Cavalier.

2.3 Subject to the requirements of Applicable Law, the prices for BA Pre-OSS Services shall be as determined by BA and shall be subject to change by BA from time-to-time.

2.4 The provisions of Sections 1.5 through 1.9 above shall also apply to BA Pre-OSS Services. For the purposes of this Section 2.4: (a) references in Sections 1.5 through 1.9 above to BA OSS Services shall be deemed to include BA Pre-OSS Services; and, (b) references in Sections 1.5 through 1.9 above to BA OSS Information shall be deemed to include information made available to Cavalier through BA Pre-OSS Services.

3. RATES AND CHARGES

The prices for the foregoing services shall be as set forth in BA's Tariffs or, in the absence of an applicable BA Tariff price, in Exhibit A or, if not set forth in either, as may be determined by BA from time to time. If BA at any time offers another resale support service the prices for which are not stated in BA's Tariffs or Exhibit A, BA shall have the right to revise Exhibit A to add such prices.

LICENSE AGREEMENT NUMBER

DATED

BETWEEN

BELL ATLANTIC VIRGINIA, INC.

(LICENSOR)

AND

(LICENSEE)

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LICENSE AGREEMENT

THIS AGREEMENT, entered into on this ____ day of _____, 1999, between Bell Atlantic - Virginia, a corporation organized and existing under the laws of the State of Virginia, having its principal office in the city of Richmond (hereinafter BA), and _____, a corporation (partnership, or other legal entity) organized and existing under the laws of the _____ of _____, having its principal office in the city of _____ (hereinafter Licensee).

WITNESSETH:

WHEREAS, Licensee desires to place and maintain aerial and underground cables, equipment and facilities on Poles, and in the Conduits or Rights of Way of BA; and

WHEREAS, BA is willing to permit the placement of said cables, equipment and facilities on or within BA's structures or property on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement and related Appendices, the following terms shall have the meanings stated below. A term listed below intended to convey the meaning stated below is capitalized when used.

1.1 Anchor

An assembly (rod and fixed object or plate) owned solely or in part by BA, designed to resist the pull of a Guy Strand.

1.2 Conduit

A tube structure containing one or more Ducts or Innerducts used to house cables, that is owned by BA and with respect to which BA has the right to authorize the occupancy of Licensee's Facilities.

1.3 Conduit Occupancy

Occupancy of a Conduit System by any item of Licensee's Facilities.

1.4 Conduit Section

Conduit between two adjacent Manholes or between a Manhole and an adjacent pole or other structure.

1.5 Conduit System

Any combination of Ducts, Innerducts, Conduits, Manholes and handholes joined to form an integrated whole. As used in this Agreement, "Conduit System" does not include a controlled environment vault.

1.6 Duct

A raceway for facilities that is owned solely or in part by BA, that is contained in a Conduit, and with respect to which BA has the right to authorize the occupancy of Licensee's Facilities.

1.7 Guy Strand

A metal cable attached to a Pole and Anchor (or another structure) for the purpose of increasing Pole stability.

1.8 Innerduct

A Duct contained within another Duct.

1.9 Joint Owner

A person, corporation or other legal entity, sharing ownership of a Pole, Duct, Conduit and/or Anchor with BA.

1.10 Manhole

A subsurface enclosure used for the purpose of installing, operating and maintaining facilities. As used in this Agreement, "Manhole" does not include a controlled environmental vault.

1.11 Make-Ready or Make-Ready Work

All work, including but not limited to rearrangement and/or transfer of existing facilities, replacement of a Pole, and other changes, required to accommodate Licensee's Facilities on a Pole, or in a Conduit or Right of Way.

1.12 Pole

A pole owned solely or in part by BA with respect to which BA has the right to authorize the Attachment of Licensee's Facilities.

1.13 Pole Attachment

Any item of Licensee's Facilities affixed to a Pole.

- a) Horizontal Attachment is for a single Pole Attachment associated with pole to pole construction.
- b) Vertical Attachment is for single Pole construction where Licensee's Facilities are affixed along the vertical axis of the Pole.

1.14 Prelicense Survey

All work, including field inspection and administrative processing, to determine the Make-Ready work necessary to accommodate Licensee's Facilities on a Pole, or in a Conduit or Right of Way.

1.15 Right of Way

A right possessed by BA to use or pass over, on or under, the land of another person, with respect to which BA has the right to authorize the usage or passage of Licensee's Facilities over, on or under such land. A Right of Way may run under, on or over public or private property (including the air space above such property).

1.16 Licensee's Facilities

All facilities, including but not limited to cables, equipment and associated hardware, owned and utilized by Licensee, which are attached to a Pole, or occupy a Conduit or Right of Way.

ARTICLE II

SCOPE

- 2.1 Subject to the provisions of this Agreement, for licenses granted by BA in accordance with Article VII, below, BA hereby grants to Licensee a nonexclusive license authorizing the Attachment of Licensee's Facilities to BA's Poles, or the placement of Licensee's Facilities in BA's Conduits or Rights of Way, as specified in the pertinent application.
- 2.2 No use, however extended, of Poles, Conduits or Rights of Way, or payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easements or any other ownership or property rights of any nature in such Poles, Conduits or Rights of Way. Licensee's rights herein shall be and remain a mere license. Neither this Agreement nor any license granted hereunder shall constitute an assignment of any of BA's rights to use the public or private property at locations of such Poles, Conduits or Rights of Way.
- 2.3 Nothing contained in this Agreement shall limit BA's right to locate and maintain its Poles, Ducts, Conduits and Rights of Way, and to operate its facilities in conjunction therewith, in such a manner as will best enable it to fulfill its own service requirements consistent with its obligations under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act") and any other applicable law or regulation (collectively "Applicable Law").
- 2.4 To the extent required by Applicable Law, BA shall grant Licensee nondiscriminatory access to BA's Poles, Conduits and Rights of Way. This obligation extends to Poles, Conduits and Rights of Way BA owns and with respect to which BA has the right to authorize the occupancy of Licensee's Facilities. In cases of Poles, Conduits and Rights of Way BA owns, but with respect to which BA does not have the right to authorize the occupancy of Licensee's Facilities, to the extent required by Applicable Law, BA shall reasonably cooperate with Licensee to permit Licensee to obtain a right of occupancy for Licensee's Facilities, subject to BA's right to provide a reasonable technical evaluation of the requirements for such occupancy to the property owner or other authorized person. Such reasonable cooperation by BA shall not obligate BA to purchase a right of occupancy for, or right to authorize the occupancy of, Licensee's Facilities. Upon reasonable request by Licensee, BA will provide any documentation that is not confidential or privileged in its possession supporting a claim that it does not own or have authority to grant access to a given Pole, Conduit, or Right of Way.

ARTICLE III

FEES AND CHARGES

- 3.1 Licensee shall pay all fees and charges applicable in connection with the Attachment of Licensee's Facilities to a Pole, or occupancy of a Conduit or Right of Way, as specified in Appendix I attached hereto and made a part of this Agreement.
- 3.2 Nonpayment of any amount due under this Agreement shall constitute a default by Licensee of this Agreement. Late payments shall be subject to a late payment charge as specified in Appendix I, Section 2.5.
- 3.3 After a failure by Licensee to make payment as required hereunder, or as a condition to Attachment or occupancy upon BA's reasonable determination that Licensee may have difficulty meeting its financial commitments hereunder (including, but not limited to, if Licensee's credit rating indicates that Licensee is delinquent on its obligations), BA may require a bond in a form satisfactory to BA or other financial security satisfactory to BA, in such amount as BA from time to time may reasonably require, to guarantee the performance of all Licensee obligations under this Agreement. Licensee's provision of the bond or financial security shall not operate as a limitation upon the obligations of Licensee hereunder; and if Licensee furnishes a deposit of money pursuant to this section, such deposit may be held during the continuance of this Agreement at the option of BA as security for any and all amounts which are or may become due to BA under this Agreement.
- 3.4 On an annual basis, changes in the amount of the fees and charges identified in Appendix I may be made by BA upon at least 60 days prior written notice to Licensee in the form of a revised Appendix I, and Licensee agrees to pay such changed fees and charges provided that they are in accordance with Applicable Law. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such notice period if the change in fees and charges is not acceptable to Licensee, by giving BA written notice of its election to terminate this Agreement at least 30 days prior to the end of such notice period.

ARTICLE IV

ADVANCE PAYMENTS

- 4.1 In the event Licensee fails to make payment as required hereunder or BA reasonably determines that Licensee may have difficulty meeting its financial commitments hereunder (including, but not limited to, if Licensee's credit rating indicates that Licensee is delinquent on its obligations), Licensee shall be required to make an advance payment to BA prior to:
- a) any undertaking by BA of a Preliminary Survey or the administrative processing of such a survey, in an amount sufficient to cover the estimated charges for completing the specific work operation required, and
 - b) performance by BA of any Make-Ready work required, in an amount sufficient to cover the estimated charges for completing the required Make-Ready work.
- 4.2 The amount of the advance payment required will be credited against the payment due BA for performing the Preliminary Survey and/or Make-Ready work.
- 4.3 Where the advance payment is less than the charge by BA for such Preliminary Survey and/or Make-Ready work, Licensee agrees to pay BA within 30 days of receipt of the bill all sums due in excess of the amount of the advance payment.
- 4.4 Where the advance payment exceeds the charge by BA for such survey and/or Make-Ready Work, BA shall refund the difference to Licensee.

ARTICLE V
SPECIFICATIONS

- 5.1 Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of Applicable Law, and the requirements and specifications of the following publications, as amended from time-to-time, the Manual of Construction Procedures (Blue Book), the National Electrical Code (NEC), and the National Electrical Safety Code (NESC), the rules and regulations of the Occupational Safety and Health Act (OSHA) and regulations or directives of a governing authority having jurisdiction over the subject matter. Where a difference in requirements or specifications may exist, the more stringent shall apply.
- 5.2 Licensee shall correct all safety violations immediately upon notice from BA. Licensee shall correct all other non-standard conditions within thirty (30) days from receipt of written notice from BA. If Licensee does not correct any violation or non-standard condition within the aforementioned time limits, BA may at its option correct said violations or conditions at Licensee's sole expense and risk.
- 5.3 Notwithstanding Paragraph 5.2 of this Article, when conditions created by Licensee's Facilities pose an immediate threat to the safety of the public or the employees of BA or other attachers or occupants, interfere with the performance of BA's service obligations or the service obligations of other attachers or occupants, or pose an immediate threat to the physical integrity of BA's facilities or structures or the facilities or structures of other attachers or occupants, BA may perform such work and/or take such action as it deems necessary using reasonable care without first giving written notice to Licensee. As soon as practical thereafter, BA will advise Licensee in writing of the work performed or the action taken and will endeavor to arrange for reaccommodation of Licensee's Facilities so affected. Licensee shall pay BA for all reasonable costs incurred by BA in performing such work.
- 5.4 The failure of BA to notify Licensee of violations or non-standard conditions or to correct violations or non-standard conditions pursuant to Paragraph 5.2 or Paragraph 5.3 of this Article shall not relieve Licensee of its responsibility to place and maintain its Facilities in a safe manner and condition in accordance with the terms of this Agreement, and shall not relieve Licensee of any liability imposed by this Agreement.
- 5.5 BA and Licensee shall each provide a single point of contact for processing license applications and access to information needed to prepare a license application.

ARTICLE VI

LEGAL REQUIREMENTS

- 6.1 Before Licensee attaches Licensee's Facilities to Poles, or occupies Conduits or Rights of Way, Licensee shall be responsible for obtaining from appropriate public and private property owners and authorities any authorization required to construct, operate and maintain Licensee's Facilities. Evidence of Licensee's having obtained lawful authority to so construct, operate and maintain Licensee's Facilities shall be submitted to BA forthwith upon demand by BA.
- 6.2 No license granted under this Agreement shall extend to any Poles, Conduits or Rights of Way where the Attachment or placement of Licensee's Facilities would result in a forfeiture of rights of BA or BA's existing attachers or occupants to occupy the property on which such Poles, Conduits or Rights of Way are located. If the existence of Licensee's Facilities on a Pole, or in a Conduit or Right of Way, would cause a forfeiture of the right of BA or BA's existing attachers or occupants to occupy the property on which the Pole, Conduit, or Right of Way is located, Licensee agrees to remove Licensee's Facilities forthwith upon receipt of written notification from BA. If Licensee's Facilities are not so removed, BA may perform or have performed such removal after the expiration of 60 days from the receipt of said written notification. All removals of Licensee's Facilities shall be at Licensee's expense.

ARTICLE VII

ISSUANCE OF LICENSES

- 7.1 Before Licensee shall attach to any Pole, or occupy any portion of a Conduit or Right of Way, Licensee shall make written application for and have received a written license from BA utilizing the following forms: Appendix II, Forms A-1 and A-2 and/or B-1 through B-3.
- 7.2 BA shall process all license applications, including the performance of a Prelicense Survey, on a first-come, first-served basis in accordance with the provisions of Articles VII and VIII. BA shall make all access determinations in accordance with the requirements of Applicable Law, considering such factors as capacity, safety, reliability and general engineering considerations. BA shall inform Licensee in writing as to whether an application has been granted or denied (including the reasons for denial) within the following time after receipt of such application: 45 days, plus any time taken by Licensee for action by Licensee, including, but not limited to, time taken by Licensee to respond to BA's proposal for a Prelicense Survey. Where an application involves an increase in capacity by BA, BA shall take reasonable steps to accommodate requests for access in accordance with Applicable Law. Before denying Licensee access based on lack of capacity, BA shall explore potential accommodations in good faith with Licensee. The Parties agree to consider reasonable and prudent ways to expand Rights of Way at the lowest cost.
- 7.3 In order to facilitate Licensee's completion of an application, BA shall use commercially reasonable efforts to provide Licensee, within ten (10) business days of a legitimate request identifying the specific geographic area and types and quantities of required structures, access to such maps or other relevant data reasonably necessary to complete the applications described above, subject to a non-disclosure agreement in a form reasonably agreeable to BA. Such requests shall be processed by BA on a "first-come, first-served" basis.
- 7.4 License applications received by BA from two or more applicants for the same Pole, Conduit Section or Right of Way will be processed by BA according to the order in which the applications are received by BA. If any additional applicants file an application at least thirty (30) days prior to the commencement of the initial applicant's Make-Ready Work, BA shall use commercially reasonable efforts to notify all applicants, within 20 days of receipt of the additional application, of the following: 1) that two (or more) applications have been received for some or all of the same structures or property; 2) the name and address of the other applicant(s); and 3) that the applicants may wish to share Make-Ready costs between them. The responsibility for arranging for the sharing of Make-Ready costs shall be on the applicants, while the responsibility for transmitting to BA any Make-Ready changes resulting from the additional applicant(s) shall be on the

initial applicant. BA shall bill the initial applicant for the cost of all shared Make-Ready Work pursuant to executed Form A-4, Appendix II.

- 7.5 If within twelve (12) months from the date a license is granted by BA, Licensee shall not at a minimum have initiated material construction or similar activity related to its Attachment or occupation, Licensee's license for the applicable Pole(s), Conduit(s) or Right(s) of Way shall automatically terminate and Licensee shall remove any Facilities installed as of such date in accordance with the provisions of Section 9.12. Licensee shall be liable for Attachment or occupancy charges commencing the date of the license grant.
- 7.6 Where BA has available Ducts or Innerducts, BA shall make available Ducts or Inner-Ducts to Licensee for Licensee's use in accordance with Applicable Law. No more than one full-sized Duct (or one full-sized and one Innerduct if both copper and fiber cable are used in the Conduit) shall be assigned as an emergency Duct in each Conduit Section. If BA or any other service provider, including Licensee, utilizes the last unoccupied full-sized Duct in the applicable cross-section, that provider shall, at its expense, reestablish a clear, full-sized Duct for emergency restoration as soon as practicable or immediately upon the occurrence of an emergency requiring such space.

ARTICLE VIII

PRELICENSE SURVEY AND MAKE-READY WORK

- 8.1 When an application for Attachment to, or occupation of, a Pole, Conduit or Right of Way is submitted by Licensee, a Prelicense Survey will be required to determine the existing adequacy of such structures or property to accommodate Licensee's Facilities.
- 8.2
- a) The field inspection portion of the Prelicense Survey, which requires the visual inspection of such structures or property, shall be performed by BA (with participation by Licensee at its option, for which BA shall provide at least 24 hours advance notice). At its option, BA may permit Licensee to perform the field inspection survey subject to a quality check by BA. BA shall also perform the administrative processing portion of the Prelicense Survey, which includes the processing of the application, the preparation of the Make-Ready Work orders (if necessary), and the notification of work requirements to other attachers and occupants (if necessary).
 - b) BA shall make commercially reasonable efforts to advise Licensee in writing of the estimated charges that will apply for its Prelicense Survey work no later than ten (10) days from receipt of Licensee's application. BA shall receive written authorization from Licensee before undertaking such work (Appendix II, Form B-1). Alternatively, Licensee may pay BA the estimated charges that will apply for a Prelicense Survey with its submission of an application provided that BA has advised Licensee that standard estimated charges exist for the type of application that is being submitted.
- 8.3 In the event BA determines that a Pole, Conduit or Right of Way which Licensee desires to utilize is inadequate or otherwise needs rearrangement, modification or expansion of the existing facilities, structures or property to accommodate Licensee's Facilities, BA will advise Licensee in writing of the estimated Make-Ready charges that would apply to any rearrangements, modifications or expansions that BA proposes to undertake (Appendix II, Form B-4). If no Make-Ready Work is needed to accommodate Licensee's Facilities, upon receipt of a license from BA, Licensee may proceed with placement of its Facilities. BA shall complete the steps described in paragraphs 8.1 through 8.3 within forty-five (45) days, excluding the time taken by Licensee to respond to BA's proposals.
- 8.4 Licensee shall have ten (10) business days from the receipt of said Form B-2 or Form B-4 to indicate its written authorization for completion of the required Make-Ready Work and acceptance of the resulting charges. BA shall use commercially reasonable efforts to provide written notice to existing attachers or occupiers of the affected structures or property of such proposed changes within ten (10) business days of receipt of such authorization. Such attachers or occupiers will be given sixty (60) days from such notice to indicate whether they desire to participate in the proposed modification or expansion.

- 8.5 BA shall not be obligated to initiate Make-Ready Work earlier than sixty (60) days after notice to existing attachers or occupiers, but BA shall have the right to initiate Make-Ready Work earlier if existing attachers and occupiers agree in writing. Make-Ready Work will be completed by BA in a commercially reasonable time according to a schedule to be mutually agreed upon, depending on the size of the job and the cooperation of necessary third parties. Make-Ready Work for Licensee will be scheduled and performed in the same manner as BA's Make-Ready Work is scheduled and performed. Licensee shall pay BA for all Make-Ready Work performed by BA in accordance with the provisions of this Agreement.

ARTICLE IX

CONSTRUCTION, MAINTENANCE AND REMOVAL OF LICENSEE'S FACILITIES

- 9.1 Licensee shall, at its own expense, construct and maintain its Facilities on Poles or in Conduits or Rights of Way covered by this Agreement, in a safe condition and in a manner acceptable to BA, so as not to physically conflict or electrically interfere with the facilities of BA or other authorized attachers or occupants.
- 9.2 BA shall specify the point of Attachment on each Pole to be occupied by Licensee's Facilities. Where facilities of more than one attacher are involved, BA will attempt, to the extent practical, to designate the same relative position on each Pole for each attacher's facilities.
- 9.3 Licensee shall secure BA's written consent, not to be unreasonably withheld or delayed, before adding to, relocating, replacing or otherwise modifying Licensee's Facilities attached to a Pole where additional space or holding capacity may be required on either a temporary or permanent basis. No modifications shall be made by Licensee that would affect the placement or operations of Attachments of BA or existing attachers, except through application to BA in accordance with the provisions of Articles VII and VIII.
- 9.4 Licensee must obtain prior written authorization from BA approving of the work and the party performing such work before Licensee may install, remove, or provide maintenance of its Facilities in any of BA's Conduits or Conduit Systems. BA shall not unreasonably withhold or delay such authorization.
- 9.5 In each instance where Licensee's Facilities are to be placed in BA's Conduits, Licensee and BA shall discuss the placement of Licensee's Facilities. BA shall designate the particular Duct(s) to be occupied, the location and manner in which Licensee's Facilities will enter and exit BA's Conduit System, and the specific location and manner of installation for any associated equipment which is permitted by BA to occupy the Conduit System.
- 9.6 If Licensee requests any modification, alteration or rearrangement of Poles, Conduits or Rights of Way, other than Make-Ready Work to be performed pursuant to Article VIII, above, Licensee shall reimburse BA for the cost of such modification, alteration or rearrangement, in accordance with Applicable Law.

- 9.7 Whenever BA intends to modify or alter any Poles, Conduits or Rights of Way which contain Licensee's Facilities, BA shall provide written notification to Licensee at least sixty (60) days prior to taking such action so that Licensee may have a reasonable opportunity to add to or modify Licensee's Facilities. If Licensee adds to or modifies Licensee's Facilities according to this paragraph, Licensee shall bear a proportionate share of the costs incurred by BA in making modifications or alterations of Poles, Conduits and Rights of Way, in accordance with Applicable Law.
- 9.8 Licensee shall be notified in writing at least sixty (60) days prior to any modification that will result in the rearrangement or replacement of Licensee's Facilities. Licensee agrees to make such rearrangements or replacements of Licensee's Facilities as are reasonably requested by BA or other attachers or occupants to accommodate the Attachment or placement of the facilities of BA or other attachers or occupants. If the rearrangement or replacement is required as a result of an additional Attachment or the modification of an existing Attachment sought by persons other than Licensee, including BA, then, subject to Section 9.6, above, to the extent such persons are required by Applicable Law to reimburse Licensee for the costs of rearranging or replacing Licensee's Facilities, Licensee may request such persons to reimburse Licensee for the costs actually incurred by Licensee to rearrange or replace Licensee's Facilities. BA shall not be obligated to reimburse Licensee for any costs incurred by Licensee for a rearrangement or replacement of Licensee's Facilities to the extent such rearrangement or replacement was sought by persons other than BA.
- 9.9 BA shall not attach, nor authorize other entities to attach, facilities on, within or overlashed to existing Licensee Facilities without Licensee's prior written consent.
- 9.10 BA's Manholes shall be opened only as permitted by BA's authorized employees or agents, which permission shall not be unreasonably withheld or delayed. Licensee shall be responsible for obtaining any necessary authorization from appropriate authorities to open Manholes and conduct work operations therein. Unless otherwise agreed between the Parties, Licensee's employees, agents and contractors will be permitted to enter or work in BA's Manholes only when an authorized employee or agent of BA is present or prior written authorization waiving this requirement is granted by BA. BA's said employee or agent shall have the authority to suspend Licensee's work operations in and around BA's Manholes if, in the reasonable judgment of said employee or agent, any hazardous conditions arise or any unsafe practices are being followed by Licensee's employees, agents, or contractors. Licensee agrees to pay BA the charges, as determined in accordance with the terms and conditions of Appendix I, for having BA's employee or agent present when Licensee's work is being done in and around BA's Manholes. The presence of BA's authorized employee or agent shall not relieve Licensee of its responsibility to conduct all of its work operations in and around BA's Manholes in a safe and workmanlike manner, in accordance with the terms of this Agreement.

- a) Upon reasonable request where space is available, BA will provide Licensee with space in BA's Manholes for racking and storage of cable and other materials of the type that BA stores in BA's Manholes.
 - b) Licensee, contracting with BA or a contractor approved by BA, shall be permitted to add Conduit parts to BA's Manholes or to add branches to Conduits when existing Conduits do not provide the connectivity required by Licensee, provided that the structural integrity of the Manhole and Conduits is maintained and sound engineering judgment is employed.
- 9.11 If practicable and if additional space is required, BA shall within a reasonable period of time remove any of BA's retired cable from Poles or Conduit Systems to allow for the efficient use of Pole or Conduit space.
- 9.12 Licensee, at its expense, will remove its Facilities from Poles, Conduits and Rights of Way within 60 days after:
- a) Termination of the license covering such Pole Attachment, or Conduit or Right of Way occupancy, in accordance with the terms of this Agreement; or
 - b) The date Licensee replaces its existing Facilities on a Pole with the placement of substitute Facilities on the same Pole or another Pole or replaces its existing Facilities in one Duct with the placement of substitute Facilities in another Duct.
- 9.13 Licensee shall remain liable for and pay to BA all fees and charges pursuant to provisions of this Agreement for any Attachment to a Pole or occupancy of a Conduit or Right of Way that continues after the termination of the license for such Attachment or occupancy.
- 9.14 If Licensee fails to remove its Facilities within the specified period, BA shall have the right to remove such facilities at Licensee's expense and without any liability on the part of BA for damage to such facilities.

9.15 When Licensee's Facilities are removed from a Pole, Conduit or Right of Way, no reattachment to the same Pole, or occupancy of such Conduit or Rights of Way, shall be made until:

a) Licensee has first complied with all of the provisions of this Agreement as though no such Pole Attachment or Conduit or Right of Way occupancy had previously been made, and

b) All outstanding charges due BA for such previous Attachment and/or occupancy have been paid in full.

9.16 Licensee shall advise BA in writing as to the date on which the removal of its Facilities from each Pole, Conduit or Right of Way has been completed.

ARTICLE X

TERMINATION OF LICENSES

- 10.1 Any license issued under this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Facilities on public or private property at the location of the particular Pole, Conduit or Right of Way covered by the license.
- 10.2 Licensee may at any time terminate its license with respect to the Attachment to a Pole, or occupancy of a Conduit or Right of Way, and remove its Facilities, by giving BA written notice of such termination (Appendix II, Forms C and D). Once Licensee's Facilities have been removed, they shall not be reattached to such Pole, or occupy the same portion of such Conduit System or Right of Way, until Licensee has complied with all provisions of this Agreement as though no previous license had been issued.
- 10.3 In addition to any other right to terminate Licensee's license to occupy a Pole, Conduit or Right of Way that BA may have under this Agreement, upon sixty (60) days advance written notice, BA may terminate Licensee's license to occupy any BA Pole, Conduit or Right of Way, if BA removes, abandons, terminates BA's use of or right to use, or loses BA's right to grant Licensee a right to attach to or occupy, such Pole, Conduit or Right of Way.

ARTICLE XI

INSPECTION OF LICENSEE'S FACILITIES

- 11.1 The parties understand that post-installation inspections shall be performed by BA at the sole expense of Licensee to ensure that Licensee's attachments, installations or other work has been performed in accordance with all applicable requirements.
- 11.2 Thereafter, BA reserves the right to make reasonable periodic inspections at its own expense of any part of Licensee's Facilities attached to BA's Poles, or occupying BA's Conduits or Rights of Way, provided that Licensee shall bear such expenses in the event more frequent inspections are required due to material non-conformances by Licensee that are found by BA.
- 11.3 BA will give Licensee advance written notice of such inspections, except in those instances where BA determines that safety considerations justify the need for such an inspection without the delay of waiting until a written notice has been forwarded to Licensee.
- 11.4 The making of inspections or the failure to do so shall not operate to impose upon BA any liability of any kind whatsoever nor relieve Licensee of any responsibility, obligations or liability assumed under this Agreement.

ARTICLE XII

UNAUTHORIZED ATTACHMENT, UTILIZATION, OR OCCUPANCY

- 12.1 If any of Licensee's Facilities shall be found attached to Poles, or occupying Conduit or Right of Way, for which no license has been granted, BA without prejudice to its other rights or remedies under this Agreement or at law or in equity may require Licensee to submit an application pursuant to Article VII of this Agreement within fifteen (15) days after receipt of written notification from BA of the unauthorized Attachment or occupancy. If such application is not received by BA within the specified time period, Licensee may be required to remove its unauthorized Attachment or occupancy, or BA may, at BA's option, remove Licensee's Facilities at Licensee's sole expense and risk. In addition, Licensee shall pay any unauthorized Attachment or occupancy charge as specified in Appendix I.
- 12.2 No act or failure to act by BA with regard to said unlicensed use shall be deemed as a ratification of the unlicensed use; and if any license should be subsequently issued, said license shall not operate retroactively or constitute a waiver by BA of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized use from its inception.

ARTICLE XIII

SECURITY INTEREST

Upon the request of BA after Licensee's failure to make payment as required hereunder or as a condition to Attachment or occupancy upon BA's reasonable determination that Licensee may have difficulty meeting its financial commitments hereunder (including, but not limited to, if Licensee's credit rating indicates that Licensee is delinquent on its obligations), Licensee shall grant BA a security interest in all of Licensee's Facilities now or hereafter attached to Poles, or placed in Conduit Systems or Rights of Way, pursuant to this Agreement, and Licensee agrees to perform all acts necessary to perfect BA's security interest under the terms of the Uniform Commercial Code, or applicable lien or security laws then in effect. If the terms of Licensee's loan agreements and debentures preclude the grant of liens or security interests to BA, Licensee shall grant to BA, upon BA's request, other permissible assurance or security for performance, satisfactory to BA, to cover any amounts due BA under this Agreement. Nothing in this Article shall operate to prevent BA from pursuing, at its option, any other remedies under this Agreement or in law or equity, including public or private sale of facilities under security interest or lien.

ARTICLE XIV

LIABILITY AND DAMAGES

- 14.1 BA shall exercise reasonable care to avoid damaging the Facilities of Licensee attached to Poles, or occupying Conduits or Rights of Way, under this Agreement, and shall make an immediate report to Licensee of the occurrence of any such damage caused by BA's employees, agents or contractors. BA agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of damage to such Licensee Facilities proximately caused by the negligence of BA; however, BA shall not be liable to Licensee for any loss of Licensee revenue or profits resulting from any interruption of Licensee's service caused by such damage or interference with the operation of Licensee's Facilities caused by such damage.
- 14.2 Licensee shall exercise reasonable care to avoid damaging the facilities of BA and of others attached to Poles, or occupying Conduits or Rights of Way, and shall make an immediate report of damage to the owner of facilities so damaged and Licensee assumes all responsibility for any and all direct loss from damage caused by Licensee's employees, agents or contractors; however, Licensee shall not be liable to BA for any loss of BA revenue or profits resulting from any interruption of BA's service caused by such damage or interference with the operation of BA's Facilities caused by such damage.
- 14.3 Licensee shall indemnify, protect and save harmless BA and other authorized users of Poles, Conduits or Rights of Way from any and all damages and costs, including attorneys' fees, incurred by BA as a result of acts by the Licensee or their employees, agents or contractors, including, but not limited to the cost of relocating Poles or Conduits resulting from a loss of Right of Way or property owner consents and/or the cost of defending those rights and/or consents.
- 14.4 Licensee shall indemnify, protect and save harmless BA and other authorized users of Poles, Conduits and Rights of Way from and against any and all claims, demands causes of actions and costs, including attorneys' fees, for damages to property and injury or death to Licensee's employees or other persons, including but not limited to payments under any Workmen's Compensation law or under any plan for employee's disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, use or removal of Licensee's Facilities or by their proximity to the facilities of all parties attached to a Pole or placed in Conduit or Rights of Way, or by any act or omission of the Licensee's employees, agents or contractors on or in the vicinity of BA's Poles, Conduits or Rights of Way. The foregoing indemnity, hold harmless and defense provisions shall not apply to the extent, if at all, they would violate, or be void under, applicable state law.
- 14.5 The Licensee shall indemnify, protect and save harmless BA and other authorized users of Poles, Conduits and Rights of Way from any and all claims, demands, causes of action and costs, including attorneys' fees, which arise directly or indirectly from the construction and operation of Licensee's Facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of

copyright, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from and against all claims, demands and costs, including attorney's fees, for infringement of patents with respect to the manufacture, use and operation of Licensee's Facilities in combination with Poles, Conduits, Rights of Way or otherwise.

- 14.6 BA and Licensee shall promptly advise each other of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by the erection, maintenance, repair, replacement, presence, use or removal of facilities governed by this License Agreement. Copies of all accident reports and statements made to a Party's insurer by the other Party or affected entity shall be furnished promptly to the insured Party.
- 14.7 Unless expressly provided for otherwise herein, neither party shall be liable to the other for any special, consequential or other indirect damages arising under this Agreement.